

# **EXHIBIT 3**

# **EXCERPTED**

San Francisco, California  
Thursday, December 12, 2013

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING

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1 THE COURT: Okay.

2 MR. RICHMAN: And can I ask one more question for  
3 clarification?

4 THE COURT: Yes.

5 MR. RICHMAN: So then beyond that is the idea that  
6 they give the complete hard drive, perhaps removing that  
7 information?

8 THE COURT: Yeah.

9 MR. RICHMAN: We're going to do a next step.

10 THE COURT: Let's problem-solve in the --

11 MR. RICHMAN: Step by step.

12 THE COURT: They're going to -- the private  
13 information is going to be protected by a protective order.  
14 If there's privileged information, you guys need to meet and  
15 confer to see if there's a technical solution to address  
16 your concerns --

17 MR. RICHMAN: I understand.

18 THE COURT: -- to give you the environment, the  
19 substantially similar environment, or procedures that are  
20 going to satisfy you that they cannot ever get  
21 information -- access to privileged information.

22 MR. RICHMAN: Okay.

23 THE COURT: Let's just see if there's -- let's see  
24 if there's a problem before we make one.

25 MS. STRICKLAND: I agree.

1 MR. RICHMAN: Agreed. Yeah.

2 MS. STRICKLAND: I just have a worry -- I'll just  
3 say that -- by removing -- I mean, it's destroying the  
4 integrity of the evidence if we start removing things from  
5 their computer.

6 THE COURT: We're not doing that yet. We will  
7 talk about it before that happens.

8 MR. RICHMAN: Yeah.

9 MS. STRICKLAND: If there are -- that's what I'm  
10 worried, that I don't want them to be --

11 THE COURT: Let's worry if there's a problem --

12 MS. STRICKLAND: -- removing privileged  
13 information.

14 THE COURT: No problems before their time. If  
15 there's no problem, there's no problem.

16 MR. RICHMAN: We are not going to remove anything.

17 MS. STRICKLAND: Don't remove anything.

18 MR. ANDARA: We'll get the privilege log, and then  
19 we'll meet and confer to see how we can get it.

20 THE COURT: Yeah. I'll write something that says  
21 that.

22 Okay. Let's talk about your expert. Okay. So  
23 all the cases that I'm familiar with are -- I'm going to  
24 call them the declarations in the summary judgment context.

25 MR. RICHMAN: Right.

1                   THE COURT: It does seem that -- it seems  
2 problematic to me, the sword and the shield argument that  
3 when you rely on a consulting expert to help you do your  
4 allegations in your complaint, that you can't have -- you  
5 know, you look at the summary judgment declaration cases,  
6 and they end up targeting it to what you say. It's not like  
7 broad ranging. They end up targeting it to what you say in  
8 the complaint.

9                   MR. RICHMAN: Right.

10                  THE COURT: And so that's my reaction here. And  
11 there's no -- there's nothing I could come up with in sort  
12 of this procedural context, which I'm going to call the  
13 attack of the pleadings context. But there it is. And you  
14 put it in.

15                  And I didn't see any authority except for the summary  
16 judgment authority, and that authority seems to me to allow  
17 some kind of a limited targeted discovery.

18                  MS. STRICKLAND: We -- especially when Judge  
19 Illston relied on it in her order. Well, there was a second  
20 motion to dismiss to kick out the fraudulent concealment.

21                  THE COURT: Yes. Yes.

22                  MS. STRICKLAND: And she relied on it. So they  
23 can't say, well, gee, he works for our firm now and --

24                  THE COURT: You don't get free range to get that  
25 kind of --

1 MS. STRICKLAND: Well, no, but -- we didn't. We  
2 only said it's a fact-specific inquiry. A factual basis  
3 upon which you -- the statements were made.

4 MR. RICHMAN: Right.

5 MS. STRICKLAND: It's discovery as to that.

6 THE COURT: So was there --

7 MS. STRICKLAND: And our solution would be, if  
8 they don't want us to take that discovery, then they get rid  
9 of the fraudulent concealment count of the complaint. I  
10 mean --

11 MR. RICHMAN: Judge, a few issues. First, that  
12 takes a far too narrow view of the discovery they've asked  
13 for. They've asked for this expert's entire computer.

14 THE COURT: No. No. I appreciate that. I mean,  
15 I'm saying they're not broad.

16 MR. RICHMAN: And the other thing is that -- I'm  
17 sorry. I don't mean to disagree outwardly with your Honor,  
18 but --

19 THE COURT: You're supposed to disagree if you do  
20 disagree. That's fine.

21 MR. RICHMAN: At this point, we have an expert  
22 discovery schedule set. March 28th is the first disclosure  
23 deadline. Any expert, any testimony, any report that we  
24 intend to rely on in this case, they will absolutely get.  
25 And they'll get to test all of that. They'll get to depose

1 that expert and delve into it.

2 We wouldn't be able to rely on this expert at trial or  
3 class certification or anything if we didn't actually do  
4 that.

5 THE COURT: Well, yeah. No. I appreciate that.

6 MS. STRICKLAND: This is factual discovery.

7 THE COURT: Right. Well --

8 MS. STRICKLAND: It's not an expert. And so we're  
9 willing to tailor it to that, and we can --

10 THE COURT: You've got your fact disclosure and  
11 your expert disclosure deadlines. The information needs to  
12 be disclosed. I have no idea -- it would be narrow, just  
13 like a declaration attached to a summary judgment motion,  
14 the cases that support that.

15 You'll have to figure out what the timing is and not --  
16 you know, you've got your ordinary timing issues that are  
17 already at play in the case, and I would think that the  
18 disclosure here -- I mean, it's fact discovery sort of, but  
19 it's really kind of targeted expert discovery.

20 My view is it would go in the expert disclosure  
21 guideline deadlines. You'll coordinate what it would be at  
22 the same time. It shouldn't be that big a deal.

23 MR. RICHMAN: Right. And the other issue is that  
24 this person is an employee of our firm. So just like when  
25 we say this is a factual -- the complaint is partially based

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16 | Echo Reporting, Inc., Transcriber

17 Friday, December 20, 2013

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